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FEDERAL ELECTION COMMISSION

999 E Street, N.W.  
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**SENSITIVE**

**FIRST GENERAL COUNSEL'S REPORT CELA**

MUR 6846

DATE COMPLAINT FILED: 6/24/14

DATE OF NOTIFICATION: 7/1/14

LAST RESPONSE RECEIVED: 7/22/14

DATE ACTIVATED: 11/03/14

EXPIRATION OF SOL: 10/15/15 – 11/6/17

ELECTION CYCLES: 2010, 2012

**COMPLAINANT:**

Dr. Art Robinson

**RESPONDENT:**

DeFazio for Congress and Jef A. Green  
in his official capacity as treasurer<sup>1</sup>

**RELEVANT STATUTES  
and REGULATIONS:**

52 U.S.C. § 30120

52 U.S.C. § 30124(a)

11 C.F.R. § 110.11

11 C.F.R. § 110.16(a)

**INTERNAL REPORTS CHECKED:**

Disclosure Reports

**OTHER AGENCIES CHECKED:**

None

**I. INTRODUCTION**

Complainant, Dr. Art Robinson, and Peter DeFazio were opponents in the 2010 and 2012 general elections in Oregon's Fourth Congressional District. Complainant alleges that DeFazio's campaign violated 11 C.F.R. § 110.11 by placing no disclaimers or deliberately unreadable disclaimers on billboards and by placing a disclaimer on a website "in such a way that most readers would be unlikely to notice it."<sup>2</sup> Robinson also alleges that the billboards "falsely

<sup>1</sup> Robert Ackerman was treasurer for DeFazio for Congress during the relevant period. Jef A. Green is the current treasurer of record.

<sup>2</sup> Compl. at 3-11 (May 30, 2014); *see also* 52 U.S.C. § 30120.

1 portrayed" and damaged him and that the DeFazio campaign designed the billboards and the  
2 website to intentionally deceive the public into believing that they belonged to Robinson.<sup>3</sup>

3 The DeFazio campaign asserts that the billboards and the website met the disclaimer  
4 requirements and that the lack of disclaimers on some billboards was due to vendor error and  
5 promptly corrected as soon as it was discovered.<sup>4</sup> The campaign denies that it intended to  
6 misrepresent the billboards and website as Robinson's, and asserts that the content of these  
7 advertisements accurately reflected Robinson's statements or views.<sup>5</sup>

8 Because the website meets the disclaimer requirements, we recommend that the  
9 Commission find no reason to believe that DeFazio for Congress and Jef A. Green in his official  
10 capacity as treasurer violated the Act's disclaimer provision at 52 U.S.C. § 30120 with respect to  
11 the website. The available evidence demonstrates that three of the eight billboards included in  
12 the complaint lacked disclaimers, but that the failure to include disclaimers was due to vendor  
13 error and promptly corrected by the campaign upon discovery. Further, we cannot conclusively  
14 determine whether the disclaimers on the remaining five billboards fully met the Act's  
15 disclaimer requirements without gathering additional information through an investigation. For  
16 the reasons discussed below, we do not believe that an investigation in this matter would be a  
17 prudent use of the Commission's resources. We recommend, therefore, that the Commission

<sup>3</sup> Compl. at 3-11; *see* 52 U.S.C. § 30124(a). Robinson's complaint also notes that DeFazio sent out a multipage mailing entitled "2012 Congressional Voter Guide," and asserts that it contains "deliberate misrepresentations" of his positions, an unflattering photo of him, and a disclaimer that was placed on the back of the mailing "where readers were unlikely to notice it." Compl. at 9-11. The complaint states that the mailer was "dishonest in its presentation" but concedes that the disclaimer is legal. *Id.* at 11. Based on our own review of the mailing, it appears that the disclaimer did comply with the requirements of the Act and relevant regulation. *See* 11 C.F.R. § 110.11(c)(2).

<sup>4</sup> Resp. at 1-8 (July 22, 2014).

<sup>5</sup> *Id.* at 2-4.

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1 dismiss the allegation that DeFazio for Congress and Jef A. Green in his official capacity as  
2 treasurer violated the Act's disclaimer provision at 52 U.S.C. § 30120 with respect to the  
3 billboards, and send a caution letter with respect to the three missing disclaimers.

4 Finally, it does not appear that DeFazio for Congress fraudulently misrepresented the  
5 billboards and website as Robinson advertisements. Accordingly, we recommend that the  
6 Commission find no reason to believe that DeFazio for Congress and Jef A. Green in his official  
7 capacity as treasurer violated 52 U.S.C. § 30124(a) and close the file.

## 8 II. FACTS

9 Complainant, Dr. Art Robinson, and Peter DeFazio were opponents in the 2010 and 2012  
10 general elections in Oregon's Fourth Congressional District and DeFazio for Congress  
11 ("Committee") was DeFazio's authorized campaign committee. During the 2010 and 2012  
12 elections, the Committee put up a series of billboards featuring statements purportedly made by  
13 Robinson regarding a variety of issues including, taxes, Social Security, public schools, and  
14 federal student financial aid.<sup>6</sup> For instance, the complaint includes a photo of a 2010 billboard  
15 with a picture of Robinson holding a microphone and the statement, "Art Robinson: Energy  
16 company CEO's [*sic*] shouldn't pay taxes" followed by the source for the statement and a  
17 reference to the website [www.WhoIsArtRobinson.com](http://www.WhoIsArtRobinson.com).<sup>7</sup> The billboard contains a disclaimer at  
18 the bottom which states, "Paid for by DeFazio for Congress."

19 The Complaint also includes photographs of seven billboards from 2012. The billboards  
20 each display the heading "Art Robinson Says:" followed by one of the following statements

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<sup>6</sup> Compl. at 4-8.

<sup>7</sup> *Id.* at 4. The complaint references three billboards from 2010, but provides a picture of only one, and discusses only that one.

1 attributed to Robinson: "Social Security should be ended through attrition," "Public Schools  
2 should be abolished," "End Federal Student Financial Aid Programs," and "OSU is a liberal  
3 socialist stronghold."<sup>8</sup> As with the 2010 billboard, each of the seven billboards displays the  
4 source for each statement and the website address [www.WhoIsArtRobinson.com](http://www.WhoIsArtRobinson.com).<sup>9</sup> Four of the  
5 billboards contain a disclaimer at the bottom which states, "Paid for by DeFazio for Congress"  
6 and three contain no disclaimer.<sup>10</sup>

7 DeFazio for Congress also created and maintained the website cited on each of the  
8 billboards — [www.WhoIsArtRobinson.com](http://www.WhoIsArtRobinson.com). The top two-thirds of the home page includes  
9 pictures of Robinson and more purported quotes by Robinson on a variety of issues, and contains  
10 links which connect the reader to other pages with additional information about each issue. The  
11 bottom third of the home page includes a picture of DeFazio with favorable statements about him  
12 and provides links to volunteer for or donate to DeFazio. The home page contains a disclaimer  
13 at the bottom which reads, "Paid for by Peter DeFazio for Congress," and is contained within a  
14 box. A screen capture of the home page for the website is shown below:

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<sup>8</sup> *Id.* at 5-8.

<sup>9</sup> In total, the complaint references one billboard from 2010 and seven from 2012. The complaint includes ten billboard photographs, but it appears that three of the photographs are the same billboard. *See* Compl. at 8 (showing two additional photographs of the billboard previously shown in the bottom half of the previous page).

<sup>10</sup> Robinson alleges that he warned DeFazio to stop the advertising but DeFazio continued and intensified his deceptive campaign in 2012 with more billboards and Internet advertising. Compl. at 4. On October 22, 2012, Robinson filed a lawsuit in Oregon state court seeking an award of damages against DeFazio (in his personal capacity) in connection with the allegedly deceptive billboard advertising and seeking an award of damages. *See Robinson v. DeFazio, et al.*, Josephine County [Oregon] Cir. Ct. No. 12-CV-1144. The circuit court dismissed the case in April 2013. *See* Resp., Attach. 1 (Letter Opinion (Apr. 25, 2013), *Robinson v. DeFazio, et al.*, Josephine County [Oregon] Cir. Ct. Case No. 12-CV-1144.) Robinson has also made allegations stemming from the lawsuit in this MUR 6846 complaint. Specifically, Robinson alleges potential personal use of DeFazio campaign staff in connection with the lawsuit, potential unreported and excessive contributions to the DeFazio campaign through free legal services provided by attorneys to DeFazio in connection with the lawsuit, and alleged false statements under penalty of perjury by DeFazio relating to the lawsuit. Compl. at 12-15. In Response, DeFazio for Congress asserts it was never a party to that lawsuit and there is no evidence that Committee funds or staff or assets were used in connection with the lawsuit. Rrsp. at 8-12.

HOME ART ROBINSON ON THE ISSUES "WHO IS ART ROBINSON" ON TWITTER "WHO IS ART ROBINSON" ON YOUTUBE

All across Oregon, people are asking:  
**Who is Art Robinson?**  
 Good question. We think Art is the only one. He's never been shy about his opinions.



**I think the public schools should be abolished.**  
 -Art Robinson

**Art Robinson on Schools**  
 "The whole public school system is child abuse."  
 "I think the public schools should be abolished."  
 Learn more about Art Robinson's opinions on education.

**Art Robinson on Nuclear Waste**  
 "All we need do with nuclear waste is dilute it to a low radiation level and sprinkle it over the ocean - or even over America."  
 Learn more about Art Robinson's opinions on nuclear waste.

**Art Robinson on Wall Street**  
 "But what I see in this [Wall Street] reform program right now is a government using a problem as an excuse to grow itself and greatly increase its power and I don't think that should be done."  
 Learn more about Art Robinson's opinions on Wall Street.

**Art Robinson on Social Security**  
 "It is a Ponzi Scheme. ... These entitlement programs need to be ended."  
 Learn more about Art Robinson's opinions on social security.

**Here's the good news.**  
 Oregonians are standing up for Peter DeFazio - a common sense leader who fights for the middle class and isn't afraid to stand up to party leadership and Wall Street.  
 Will you stand up, join Peter, and fight back?

**Volunteer**  
 Sign up to help DeFazio

**Donate**  
 Contribute to DeFazio



Told for by Peter DeFazio for Congress. Powered by Mandate Media.

### III. LEGAL ANALYSIS

#### A. Disclaimer Allegations

The complaint alleges that each of the eight billboards violated 11 C.F.R. § 110.11, either because it lacked a disclaimer or contained a "deliberately minimized" disclaimer that was unreadable from the highway.<sup>11</sup> The complaint includes color photographs of three billboards

<sup>11</sup> Compl. at 8. See also 52 U.S.C. § 30120.

1 with no visible disclaimer and five billboards that it asserts contain unreadable disclaimers,  
2 specifically noting the "empty space" around the disclaimers.<sup>12</sup> The complaint also alleges that  
3 the "Who Is Art Robinson" website did not include a proper disclaimer because the disclaimer  
4 was placed where it would be easily overlooked.<sup>13</sup>

5 Political committees must include a disclaimer on all public communications (which  
6 includes outdoor advertising facilities, such as billboards), bulk electronic mail, and websites  
7 available to the general public, regardless of whether the communication contains express  
8 advocacy or solicits funds in connection with a federal election.<sup>14</sup> A disclaimer notice must be  
9 clearly and conspicuously displayed — a notice is not clearly and conspicuously displayed if the  
10 print is difficult to read or if the placement is easily overlooked.<sup>15</sup> In printed communications,  
11 the disclaimer must be contained within a printed box set apart from the contents of the  
12 communications.<sup>16</sup> The print of the disclaimer must be of sufficient size to be "clearly readable"  
13 by the recipient of the communication, and the print must have a reasonable degree of color  
14 contrast between the background and the printed statement.<sup>17</sup> Commission regulations contain a  
15 safe harbor establishing that a fixed, 12-point type size is a sufficient type size for disclaimer text  
16 in newspapers, magazines, flyers, signs and other printed communications that are no larger than

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<sup>12</sup> Compl. at 6-7.

<sup>13</sup> *Id.* at 3.

<sup>14</sup> 52 U.S.C. § 30120; 11 C.F.R. § 110.11(a)(1); 11 C.F.R. § 100.26.

<sup>15</sup> 11 C.F.R. § 110.11(c)(1).

<sup>16</sup> *Id.* § 110.11(c)(2)(ii).

<sup>17</sup> *Id.* § 110.11(c)(2)(ii) and (iii). The regulations provide two safe harbor examples that would comply with color contrast requirement: the disclaimer is printed in black on a white background; or the degree of contrast between the background and the disclaimer text color is at least as great as the degree of contrast between the background color and the color of the largest text in the communication.

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1 the common poster size of 24 inches by 36 inches.<sup>18</sup> Disclaimers for larger printed  
2 communications such as billboards are judged on a case-by-case basis taking into account the  
3 vantage point from which the communication is intended to be seen or read as well as the actual  
4 size of the disclaimer text.<sup>19</sup>

5 1. Billboards

6 DeFazio for Congress acknowledges that three of the billboards included in the complaint  
7 have no disclaimers and, therefore, failed to comply with the Act's disclaimer requirement.<sup>20</sup>  
8 The committee asserts that the omission was due to vendor error and that it took prompt remedial  
9 action when it learned of the problem.<sup>21</sup> In support of its assertions, DeFazio for Congress  
10 provided the declaration of Peter DeFazio and e-mails from two vendors to the campaign  
11 apologizing for inadvertently leaving out the disclaimers.<sup>22</sup> In his declaration, DeFazio asserts

<sup>18</sup> *Id.* § 110.11(c)(2)(i).

<sup>19</sup> See Explanation and Justification for Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds, 67 F.R. 76,965 (Dec. 13, 2002).

<sup>20</sup> See Resp. at 7-8.

<sup>21</sup> *Id.*

<sup>22</sup> Resp. at 7-8; Resp. at DeFazio Declaration ¶¶ 26-28, Exs. N, O. The DeFazio declaration was not prepared in response to this matter; DeFazio had previously prepared and submitted it in separate litigation with Complainant. Declaration of Peter DeFazio in Support of Special Motions (Nov. 5, 2012), *Robinson v. DeFazio*, Josephine County Circuit Court No. 12CV1144. In his declaration, DeFazio states that on or about October 21, 2012, DeFazio for Congress became aware that one printed billboard and two digital billboards lacked disclaimers. DeFazio Declaration ¶ 26. DeFazio further states that on October 22, 2012, DeFazio for Congress notified the vendor, CBS Outdoor, of the omission on the printed billboard and the vendor immediately added the disclaimer to the billboard. *Id.* ¶ 27. DeFazio provided the e-mail from CBS Outdoor to DeFazio for Congress acknowledging responsibility for the error. Ex. N. With respect to the digital billboards, DeFazio states that the vendor, Bell and Funk, inadvertently omitted the disclaimers and that once DeFazio for Congress became aware of the problem, it instructed the billboard be taken down until corrected. *Id.* ¶ 28. DeFazio also provided the e-mail from Bell and Funk to DeFazio for Congress acknowledging the error and stating that by 4 p.m. on October 22, the disclaimer statement would be displayed on the electronic billboards. *Id.* Ex. O.

1 that the campaign contacted the respective vendors as soon as it learned of the omitted  
2 disclaimers and they were immediately corrected.<sup>23</sup>

3 The five remaining billboards appear to contain disclaimers, though Complainant alleges  
4 they are unreadable. DeFazio for Congress argues that these disclaimers met the requirements  
5 for color, size, and readability, noting that the disclaimer text was black on white background  
6 and that the text size "was far larger than readable" with a character height of at least 1.0 inches,  
7 which is more than 8-fold larger than the equivalent 12-point type size, and occupying 6% of the  
8 vertical space of the billboards.<sup>24</sup>

9 While the photographs of the five billboards appear to show that a disclaimer was  
10 included in each, we do not have enough information in the record to conclude whether or not  
11 the disclaimers on these five billboards were clearly and conspicuously displayed. As noted  
12 above, a notice is not clearly and conspicuously displayed if the print is difficult to read or if the  
13 placement is easily overlooked. The placement of the disclaimers at the bottom of each billboard  
14 does not appear to be out of the ordinary and, therefore, not easily overlooked. Further, with  
15 regard to readability, it seems reasonably clear that the disclaimers meet the safe harbor for  
16 reasonable degree of color contrast (black print on a white background) — due to the poor  
17 quality of the photos the font colors appear a dull gray but DeFazio for Congress asserts that they  
18 used black font on a white background and we have no reason to question the committee's  
19 assertion. The images are not sufficiently clear, however, to determine if the disclaimers were  
20 otherwise "difficult to read." In particular, we do not know if the disclaimers were of a sufficient  
21 size to be clearly readable. DeFazio for Congress asserts that the disclaimers "[were] far larger

<sup>23</sup> DeFazio Declaration ¶¶ 27, 28.

<sup>24</sup> Resp. at 7.

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1 than readable" because of a character height of *at least* 10 inches and occupied 6% of the vertical  
2 space of the billboards, but the purported height and width of the billboards varied and we do not  
3 know the respective size of the disclaimer used in each instance.<sup>25</sup> Without clearer photographs  
4 and/or additional information regarding the vantage point from which the communication is  
5 intended to be seen (e.g., the distance from the road and the exact disclaimer size used for each  
6 specific billboard) we cannot fairly determine in this particular case whether this font size and  
7 thickness resulted in a "clearly readable" disclaimer under the Commission's case-by-case  
8 approach.<sup>26</sup>

9 But we do not believe that the Commission needs to draw any specific conclusion about  
10 the readability of these five disclaimers because we believe that the appropriate outcome in this  
11 matter is dismissal regardless. First, we do not believe that it would be a prudent use of the  
12 Commission's resources to investigate this matter. The Commission typically declines to pursue  
13 violations where a disclaimer is included in a communication, but there is a potential violation  
14 stemming from a technical deficiency.<sup>27</sup> And here, despite Complainant's claims, we do not  
15 believe that the present record reasonably suggests that the disclaimers were not the sufficient  
16 type size or intentionally minimized to mislead the reader. Further, with respect to the missing  
17 disclaimers, the Commission has not typically pursued matters when the respondent has shown

<sup>25</sup> According to the complaint, the billboards varied in size. In Sutherlin and Albany, the billboards were 49 by 13 feet; in Roseburg, 49 by 15 feet; and in Coos Bay, 31 by 11 feet. Resp. at 7.

<sup>26</sup> The Commission specifically declined to create specific safe harbor provision for larger printed communications because it concluded that the vast differences in the potential size and manner of display of larger printed communications would render fixed type-size examples ineffective and inappropriate. See Explanation and Justification for Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds, 67 F.R. 76,965 (Dec. 13, 2002). Further, there appears to be no precedent evaluating the circumstances under which the Commission has determined what size disclaimer meets the "clearly readable" standard for billboards.

<sup>27</sup> See footnote 30, *infra*.

1 that a missing disclaimer was due to a vendor's inadvertent omission.<sup>28</sup> The information  
2 submitted by the Committee convincingly shows that the omissions were due to vendor error and  
3 that DeFazio for Congress took action to correct the billboards the day after it learned of the  
4 issue. We recommend, therefore, that the Commission exercise its prosecutorial discretion and  
5 dismiss the allegation that DeFazio for Congress violated 52 U.S.C. § 30120 in connection with  
6 the billboards, but send a caution letter with respect to the missing disclaimers.<sup>29</sup>

7                   2.     Website

8             Although DeFazio for Congress included a disclaimer on the webpage at the URL  
9 address, [www.WhoIsArtRobinson.com](http://www.WhoIsArtRobinson.com), Complainant alleges that the placement is not compliant  
10 because it is easily overlooked. The disclaimer is located directly below a section that contains  
11 DeFazio's photo, name, and volunteer and donation buttons for DeFazio for Congress. This  
12 placement is sufficiently clear and conspicuous to "give the reader . . . adequate notice of the  
13 identity of the person or political committee that paid for and, where required, authorized the  
14 communication."<sup>30</sup> Further, the disclaimer appears to comply with all other technical  
15 requirements of the Commission's implementing regulations as well. As a result, we conclude

<sup>28</sup> See e.g., MUR 5580 (Alaska Democratic Party) (vendor confirmed it inadvertently deleted disclaimer from mailers); MUR 5133R (Stenberg for Senate) (copy center cut off disclaimer from postcard); MUR 4566 (Democratic National Committee) (vendor failed to include disclaimer on draft mailer and corrected error).

<sup>29</sup> See e.g., MUR 5580 and MUR 5133R.

<sup>30</sup> 11 C.F.R. § 110.11(c)(1); see also 52 U.S.C. § 30120 (describing required disclaimers). But the disclaimer need not appear at the top or front of the page, so long as appears within the communication. 11 C.F.R. § 110.11(c)(2)(iv). In previous matters, the Commission has dismissed allegations of inadequate disclaimers, even where a communication or solicitation lacked a disclaimer. See, e.g., MUR 6270 (Rand Paul Committee) (Commission dismissed matter where communication lacked a disclaimer, but included sufficient information for recipients to identify the payor); MUR 6278 (Joyce B. Segers) (Commission dismissed under the Enforcement Priority System a matter where committee failed to include a disclaimer on campaign materials but public could reasonably discern from their contents that committee produced the materials and the committee took remedial action); but see MUR 6348 (David Schweikert for Congress) (Commission failed by vote of 3-3 to approve Office of General Counsel's recommendations to find reason to believe that committee violated 2 U.S.C. § 441d(c) (now 52 U.S.C. § 30120(c)) and 11 C.F.R. § 110.11(c) because the disclaimer on a mailer did not have sufficient contrast or separation from rest of the text to be clear and conspicuous).

1 that the disclaimer on this website complies with the Act's disclaimer requirements and  
2 recommend that the Commission find no reason to believe that DeFazio for Congress and Jef A.  
3 Green in his official capacity as treasurer violated 52 U.S.C. § 30120 with respect to the website.

4 **B. Fraudulent Misrepresentation**

5 Robinson alleges that the content of the billboards — including the lack of proper  
6 disclaimers, the photo of Robinson, and the use of false or out-of-context statements attributed to  
7 Robinson — fraudulently misrepresented the advertisements as belonging to Robinson and in a  
8 manner that was damaging to Robinson. Similarly, the complaint alleges that DeFazio for  
9 Congress fraudulently misrepresented the website as Robinson's and directed viewers to a  
10 misleading website that contains false information about Robinson. DeFazio for Congress  
11 disputes the claim that the website is misleading, noting that the website prominently displays a  
12 "Paid for by Peter DeFazio for Congress" disclaimer.

13 Section 30124(a)(1) of the Act and section 110.16(a) of the Commission's regulations  
14 provide that "[n]o person shall fraudulently misrepresent the person as speaking, writing, or  
15 otherwise acting for or on behalf of any candidate . . . or employee or agent thereof in a matter  
16 which is damaging to such other candidate[.]" But "[e]ven absent an express misrepresentation,  
17 a representation is fraudulent if it was reasonably calculated to deceive persons of ordinary  
18 prudence and comprehension."<sup>31</sup> The Commission has previously acknowledged that the  
19 presence of an adequate disclaimer identifying the person or entity that paid for and authorized a

<sup>31</sup> *Fed. Election Comm'n. v. Novacek*, 739 F. Supp. 2d 957, 961 (N.D. Tex. 2010); cf. *United States v. Thomas*, 377 F.3d 232, 242 (2d Cir. 2004) (citing, *inter alia*, *Silverman v. United States*, 213 F.2d 405 (5th Cir. 1954) (holding that in a scheme devised with the intent to defraud, the fact that there is no misrepresentation of a single existing fact makes no difference in the fraudulent nature of the scheme)).

1 communication may suggest that a respondent did not harbor the requisite intent to deceive for  
2 purposes of a violation of section 30124(b) of the Act.<sup>32</sup>

3 As discussed above, although the quality of the photographs submitted with the  
4 complaint makes it difficult to conclusively determine whether the disclaimers DeFazio for  
5 Congress included on its billboards fully satisfied the Act's readability requirements, it is  
6 undisputed that DeFazio for Congress in fact included disclaimers that identify its responsibility  
7 for those communications. Under these circumstances, where the alleged deficiency is technical  
8 in nature, we believe that the presence of the disclaimers indicating that DeFazio for Congress  
9 paid for the communication is enough to adequately rebut the requisite intent to deceive with  
10 regard to the content of the billboards. And though there were at least three billboards without a  
11 disclaimer, those omissions were reportedly the result of unintentional vendor error. Thus, those  
12 instances similarly lacked the requisite intent to deceive.

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<sup>32</sup> See MURs 6633 (Republican Majority PAC), 6641 (CAPE PAC), 6643 (Patriot Super PAC), 6645 (Conservative Strikeforce) (Commission found no reason to believe that respondents violated 2 U.S.C. § 441h (now 52 U.S.C. § 30124) where respondents included a disclaimer and other references to themselves on websites that appeared to support Allen West, but solicited funds on respondents' behalf); MUR 2205 (Foglietta) (Commission found no reason to believe that respondents violated 2 U.S.C. § 441h (now 52 U.S.C. § 30124) where respondents included a disclaimer on advertising material that altered opponent's disclosure reports and made unsubstantiated negative statements); MURs 3690, 3700 (National Republican Congressional Committee) (Commission found no reason to believe that respondents violated 2 U.S.C. § 441h (now 52 U.S.C. § 30124) where disclaimer disclosed that respondents were responsible for the content of negative satirical postcards that appeared to be written by opposing candidate and committee); cf. MUR 5089 (Tuchman) (Commission found reason to believe that a violation of section 441h (now section 30124) of the Act occurred where disclaimer was included only on envelope of solicitation letter because letter itself appeared to come from an entity affiliated with the Democratic Party); *but see* Factual & Legal Analysis at 4 n.2, 9, 11, MUR 5472 (Republican Victory Committee) (Commission found that the presence of disclaimer in mailings did not negate intent to deceive based upon the particular circumstances presented); and First Gen. Counsel's Rpt. at 7,

1 The claim that the “Who Is Art Robinson?” website misled viewers to believe it was  
2 associated with Robinson himself also fails for the same reasons.<sup>33</sup> The disclaimer on the  
3 website plainly identified its source as DeFazio for Congress, it was placed immediately below  
4 the DeFazio contribution buttons within a box and in plain type, and it otherwise complied with  
5 the Commission regulations. Moreover, the content of the website and its presentation tend to  
6 support the disclaimer’s effectiveness and do not reasonably suggest that DeFazio for Congress  
7 sought to deceive the viewer concerning the website’s actual source through the rhetorical  
8 approach it took in opposition to Robinson. Indeed, a significant portion of the home page  
9 contains material advocating for DeFazio, prominently stating “Here is the good news.  
10 Oregonians are standing up for Peter DeFazio – a common sense leader who fights for the  
11 middle class and isn’t afraid to stand up to party leadership and Wall Street. Will you stand up,  
12 join Peter, and fight back?” For these reasons, we see no basis to conclude that DeFazio for  
13 Congress fraudulently misrepresented that the website was “speaking or writing or otherwise  
14 acting for or on behalf of” candidate Robinson.

15 Accordingly, we recommend that the Commission find no reason to believe that DeFazio  
16 for Congress and Jef A. Green in his official capacity as treasurer violated 52 U.S.C. § 30124(a)  
17 and close the file.<sup>34</sup>

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<sup>33</sup> Compl. at 3.

<sup>34</sup> The DeFazio Committee uses Art Robinson’s name in the URL [www.WhoIsArtRobinson.com](http://www.WhoIsArtRobinson.com),” and that website also contains links to Twitter and YouTube pages using the names “Who is Art Robinson@realartrobinson” and “WhoisArtRobinson – YouTube,” respectively. Although not alleged, this use of Robinson’s name in the names of the website and Twitter and YouTube pages raises the issue of whether DeFazio for Congress may have violated the naming provisions at 52 U.S.C. § 30102(e)(4) and 11 C.F.R. § 102.14(a). Cf. MURs 6781, 6786, 6802 (NRCC), First General Counsel’s Report at 9-17 (Oct. 8, 2015) (recommending that the Commission find reason to believe respondent violated section 30102(e)(4) where the NRCC included candidate names without showing opposition to those candidates in web addresses and titles of websites, most of which solicited contributions for the NRCC); MUR 6399 (Yoder) (Commission failed by 3-3 vote to approve OGC’s recommendations to find reason to believe committee violated naming provisions by using the name of Yoder’s opponent in the title of website without authorization). Under the circumstances presented here, however, we do not believe the question warrants further

IV. RECOMMENDATIONS

1. Dismiss the allegation that DeFazio for Congress and Jef A. Green in his official capacity as treasurer violated 52 U.S.C. § 30120 with respect to the billboards and send a letter of caution.
2. Find no reason to believe that DeFazio for Congress and Jef A. Green in his official capacity as treasurer violated 52 U.S.C. § 30120 with respect to the website.
3. Find no reason to believe that DeFazio for Congress and Jef A. Green in his official capacity as treasurer violated 52 U.S.C. § 30124(a)(1).
4. Approve the attached Factual and Legal Analysis.
5. Approve the appropriate letters.

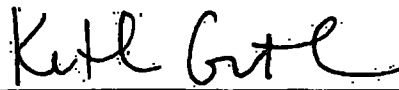
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consideration. First, when accessing [www.WhoisArtRobinson.com](http://www.WhoisArtRobinson.com), the viewer is immediately redirected to a website at a URL address that also contains the name of DeFazio's committee, "[whoisartrobinson.defazioforcongress.org](http://whoisartrobinson.defazioforcongress.org)." Moreover, the Twitter account had very modest activity for only two months, from September to October 2010, with only 11 tweets and 11 followers. Finally, although the naming restrictions are not limited to fundraising projects, *see* Advisory Op. 2015-04 (Collective Actions PAC), neither the Twitter nor YouTube account includes solicitations for contributions. *See* Explanation and Justification for Special Fundraising Projects and Other Use of Candidate Names by Unauthorized Committees, 59 Fed. Reg. 31,424-45 (July 15, 1992) (stating that the naming prohibition is designed to "minimiz[e] the possibility of fraud and abuse" that may occur when an unauthorized committee raises funds through such activities, including special project names, on behalf of itself rather than the named candidate). Given these circumstances and in light of our other recommendations, we do not believe the additional potential violations warrant further administrative action or analysis.

6. Close the file.

3/4/16

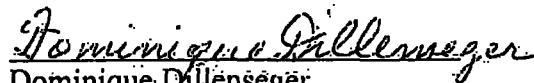
Date



Kathleen Guith  
Acting Associate General Counsel for  
Enforcement



Peter G. Blumberg  
Assistant General Counsel



Dominique Dillenséger  
Attorney

Attachment:  
Factual and Legal Analysis

001-01444071